

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 492 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GOPALBHAI MADHUSUDAN PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 492 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR VM PANCHOLI APP for Respondent No. 1
..... for Respondent No. 2
-

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 14/07/2004

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of
the Constitution, the petitioner whose vehicles (tankers)

bearing registration No.GJ-03-T-4030 and GRY 3803 which are seized by Halol Police station in connection with crime registered vide CR No.337/03 and lying at Halol police station, has prayed to quash and set aside the judgment and order dated 6.5.2004 passed in Criminal Revision Application No. 42 of 2004 by the learned Additional Sessions Judge, 2nd Fast Track Court, Panchmahals at Godhra, confirming the order dated 15.4.2004 passed by learned JMFC Halol in Criminal Misc. Application No.3 of 2004 and further prayed to release the said tankers on suitable terms and conditions as may be deemed fit by this Court.

2. On the basis of the information received, respondent No.2 herein carried out raid at the factory premises of "Shriji Petrochem" on 16.12.2003. In the said premises two tankers found parked. Tanker bearing registration No.GJ-03-T-4030 was found empty whereas stock of 1700 litres of DWF Oil was found in tanker bearing registration No.GRY 3803. As the product in the tanker was suspected to be kerosene, samples of the product were drawn by respondent No.2 and both the tankers are seized. Thereafter the police party reached at the petrol pump. While the inspection was going on, FSL Scientist CN Paragi and Mamlatdar of Halol reached at the petrol pump and they drew samples of petrol and diesel by making panchnama. Thereafter the team again reached at the factory premises and samples of the products were drawn from the underground tanks in which mixture of raw material was under process. On the basis of the same, FIR being CR No.I-337 of 2003 is registered with Halol police station for the offences punishable under sections 3 and 7 of the Essential Commodities Act and Section 420, 120-B and 114 of the IPC on 18.12.2003.

3. By filing this petition, the petitioner contended that the tankers of the petitioner are lying idle in open place of the police station and the petitioner apprehends that the same will be deteriorated if they are kept idle and in open place. The petitioner also contended that as he is facing great difficulties in his business, he made an application dated 28.1.2004 before the learned JMFC Halol under sections 451 and 457 of the Code of Criminal Procedure ('the Code' for short) for releasing the said tankers on suitable terms and conditions. The said application came to be rejected by order dated 15.4.2004.

4. Aggrieved thereby the petitioner went in revision before the District and Sessions Court, Godhra by filing Criminal Revision Application No.42 of 2004 and the learned Additional Sessions Judge, 2nd Fast Track Court

Judge, Panchmahals at Godhra, by judgment and order dated 6.5.2004 rejected the said revision application which has given rise to the present petition.

5. Mr. Prajapati, learned advocate of the petitioner, contended that the petitioner is the owner of the tankers and the said vehicles are the means of earning of the petitioner. The vehicles are kept in open place in Halol Police Station and the petitioner apprehends that the vehicles will be deteriorated if they are not released and interim custody is not granted to the petitioner on suitable terms and conditions. He also challenged the order of both the courts below by pointing out that FSL reports are in his favour as no adulteration has been found in the samples and therefore according to him no offence is committed by the petitioner under the Essential Commodities Act or under the IPC. He also emphasised that the tankers in question were the source of income of the petitioner and if the tankers are kept idle the petitioners will have to face financial crunches which would affect his business. He therefore urged to release the vehicles on suitable terms and conditions.

6. In support of the aforesaid contentions, he has relied upon a decision of the Supreme Court in the case of SA Desai v. State of Gujarat, 2003 (2) GLR 1337 wherein the Supreme Court has considered the provisions of section 451 of the Code and has issued certain guidelines.

5. Mr. VM Pancholi, learned APP for respondent No.1 - State of Gujarat submitted that appropriate orders may be passed in view of the settled principles enunciated by the Supreme Court in SA Desai's case (supra).

6. I have considered the submissions advanced by the learned advocates for the parties. I have also considered the averments made in the petition, orders which are impugned in this petition and also considered the judgment cited at the bar.

7. So far as the factual background is concerned, there is no dispute and there cannot be any dispute that an offence is registered and in that connection two tankers belonging to the petitioner came to be seized by Halol Police Station and they are lying at the police station. The petitioners therefore had filed application under Section 451 of the Code before the learned JMFC, Halol for releasing the said two tankers which came to be rejected and against that order revision application was filed before the revisional Court, which also came to be

rejected.

8. In SA Desai's case (supra), Supreme Court has considered the provisions of section 451 of the Code and has issued certain guidelines which read as under:

"15. Learned senior counsel Mr. Dholakia appearing for the State of Gujarat further submitted that at present in police station premises, number of vehicles are kept unattended and vehicles become junk day-by-day. It is his contention that appropriate directions should be given to the magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicle if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over of vehicles of the persons from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. xxxxxxxx

19. xxxxxxxx

20. xxxxxxxx

21. However, these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under section 451 of Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High

Court with regard to such article are implemented properly."

9. Applying the principles laid down by the Supreme Court in the above mentioned judgment to the facts of the present case, and more particularly in view of the fact that if the tankers of the petitioner are lying idle and in open place at Halol Police station they will be deteriorated during the course of trial which would take considerable time. The petitioner's business is also likely to be affected as the two tankers are the source of earning of the petitioner. Therefore, it is in the fitness of things to release both the tankers on suitable terms and conditions.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order dated 15.4.2004 passed by the learned JMFC, Halol in Criminal Misc. Application No. 3 of 2004 and the order dated 6.5.2004 passed by the learned Additional Sessions Judge, 2nd Fast Track Court Judge, Panchmahals at Godhra, in Criminal Revision Application No.42 of 2004, are quashed and set aside. The tankers bearing registration No.GJ-03-T-4030 and GRY 3803 seized by Halol Police station in connection with crime registered vide CR No. I-337/2003 which are at present lying in the said police station are ordered to be released on the following terms and conditions:

(i) The petitioner shall furnished a solvent surety of an amount of Rs.5 lakhs and personal bond of the like amount to the satisfaction of learned JMFC, Halol;

(ii) The petitioner shall also file an undertaking before the learned JMFC, Halol to the effect that the petitioner shall not transfer or part with the possession of the tankers bearing registration No. GJ-03-T-4030 and GRY 3803 without prior permission of the learned JMFC, Halol and shall also produce the said tankers as and when called for during the trial.

11. It is made clear that violation of any of the aforesaid conditions will result in forfeiture of the tankers without reference to the Court. It is also made clear that this Court has not examined the merits of the allegations made in the said CR. It is for the learned JMFC Halol to examine the same during the course of trial.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)